The question that has to be decided therefore in this case is, did the deceased intend to do that which at the time of doing it was meant to be a gift out-and-out of the business to the 1st plaintiff and the defendant or did he intend to make a gift in the future which is in effect a promise to make a gift thereafter? Taking into consideration all the surrounding circumstances of this case in addition to the words which were used, in my opinion on the balance of probabilities the deceased intended to make a gift out-and-out of the business to the 1st plaintiff and the defendant prior to his death, and such gift was of the business and the premises in which it was carried on.

The plaintiffs' claim is dismissed with costs.

Claim dismissed.

Solicitors: *Jayadeva, Zahir & Ismi; S. Thillaimuthu.*

RE YAP HONG KHAI, DECEASED; *Ex Parte* WILLIAM JACKS & CO. (MALAYA) LTD.

[O.Bk.J. (MacIntyre J.) June 19, 1965]

[Ipoh — In Bankruptcy No. 108 of 1964]

Bankruptcy — Petition for administration of estate in — Letters of administration not extracted — Service of petition on persons to whom letters of administration not granted — Whether service good — Bankruptcy Ordinance, 1959, s. 122(4) — Bankruptcy Rules, 1921, r. 233(1).

An order was made under section 122(4) of the Bankruptcy Ordinance for the administration in bankruptcy of an estate on the petition of a creditor of the estate and the prescribed notice was ordered to be served on the administratrices of the estate. Before the order was extracted it was discovered that the administratrices had not extracted the grant of letters of administration. The question was whether the service of the petition on the administratrices was good or not.

Held: rule 233(1) of the Bankruptcy Rules requires the petition to be served on the person who has taken out letters of administration and therefore the service of the petition in this case was bad and the order made must be recalled.

Cases referred to:—

(1) *In re a Debtor* [1939] 1 Ch. 594.

(2) *P. Govindasamy Pillay & Sons Ltd.* v. *Lok Seng Chai & Ors.* [1961] M.L.J. 89.

BANKRUPTCY.

W. S. W. Davidson for the applicant.

Assistant Official Assignee in person.

MacIntyre J.: At the hearing of this petition on 26th April 1965, I made an order under section 122(4) of the Bankruptcy Ordinance for the administration in bankruptcy of the estate of Yeap Hong Khai, deceased, upon proof of the petitioner's debt and upon proof of service of the prescribed notice upon Lim Ewe Kum (f) and Yap Mah Ni alias Yap Siew Hua (f), the administratrices of the estate of the said deceased.

Before the order was extracted, it was discovered that the administratrices had not extracted the grant of letters of administration whereupon I called upon Mr. Davidson who represented the petitioner at the hearing and the assistant official assignee to address the court on the question of the validity of the service of the notice upon the said administratrices.

The matter came up for hearing on the 3rd June 1965 and the argument resolved itself into a question of the proper interpretation of section 122(4) of the Bankruptcy Ordinance.

Section 122(4) reads as follows:

"Upon the prescribed notice being given to the legal representatives, if any, of the deceased debtor the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs."

Mr. Davidson for the petitioner submitted that the occurrence of the words, "if any," after the words, "upon the prescribed notice being given to the legal representatives," indicated that a petition for the administration of a deceased's estate in bankruptcy could be made even if a legal representative had not been appointed. In this respect, he pointed out that the corresponding section in the English Bankruptcy Act of 1914, namely, section 130(2) differed from ours in that the words, "if any," are absent. He therefore contended that the decision in the case of *In re A Debtor* (1) in which it was held that on a true construction of section 130 the court had no power to make an order until the legal personal representative had been constituted did not apply under our law.

The second point he argued was that even if on a true construction of section 122(4) of the Bankruptcy Ordinance no order can be made until the legal personal representative had been served, the service of the notice in the present case was good and sufficient. He contended that for the purpose of service of the notice it was immaterial whether the administratrices had extracted the grant of letters of administration or not. He further contended that the judgment of Ismail Khan J., in *P. Govindasamy Pillay & Sons Ltd.* v. *Lok Seng Chai & Ors.*(2) only decided that a legal representative cannot sue or be sued until he had extracted his grant of letters of administration, and did not touch upon the question of the validity of the service of a notice upon an administrator who had not extracted the grant.

In this case I do not think that I have to consider the question whether the service of the

notice was valid or not. The prescribed notice under section 122(4) is the notice which is endorsed on the petition itself and reads as follows:

"This petition having been presented to the court on the day of 19 , it is ordered that this petition shall be heard at noon.

If you, the said J.S. or G.H., intend to dispute the matter of any of the statements contained in the petition, you must file with the Registrar of this court a notice showing the grounds upon which you intend to dispute the same."

What I have to consider therefore is whether the service of the petition on the administratrices was good or not. Rule 233(1) of the Bankruptcy Rules which applies in this case reads:

"The petition shall unless the court otherwise directs be served on each executor who has proved the will or as the case may be on each person who has taken out letters of administration. The court may also if the court thinks fit order the petition to be served on any other person."

It is clear from this rule that the person to be served should not only be the person who had been appointed administrator but who had also taken out letters of administration.

I hold therefore that the service of the petition is bad and recall the order made on the 26th of April 1965.

Order recalled.

Solicitors: *Gibl & Co.*

THANGAVELU & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Aziz J.) June 28, 1965]

[K.L. — Criminal Appeal No. 74 of 1964]

Bribery and corruption — Conviction on accomplice evidence — Cautioned statement by accused — Whether such statement can be used to implicate co-accused — Prevention of Corruption Act, 1961, s. 4(a).

This was an appeal against the conviction of the appellants for charges under section 4(a) of the Prevention of Curruption Act. The main grounds of appeal were that: (1) the learned president of the sessions court failed to consider whether some of the witnesses were accomplices and if so whether the necessary caution had been taken in accepting such evidence; (2) the learned president erred in law in considering the statement of the second appellant as evidence against the first appellant.

Held: (1) there was nothing in the judgment of the learned president to indicate that he had applied his mind to determine whether or not any of the witnesses were accomplices and if so whether there was any desirability for corroboration of their evidence and therefore the conviction of the first appellant must be quashed;

(2) as the second appellant had made a cautioned statement confessing to the offence there was a presumption of law against him and as he had failed to rebut the presumption, his appeal against conviction must be dismissed.

CRIMINAL APPEAL.

Dato' David Marshall and *R. Ponnudurai* for the first appellant.

Chooi Mun Sou for the second appellant.

B. T. H. Lee (Senior Federal Counsel) for the respondent.

Abdul Aziz J.: The second appellant was charged under section 4(a) of the Prevention of Corruption Act 1961 and the first appellant was charged with the abetment of the offence committed by the second appellant contrary to section 11 and section 4(a) of the same Act. Upon these charges they were convicted and sentenced to two months imprisonment and a fine of $50. Against this conviction and sentence the appellants now appeal.

The prosecution case was rather involved. To summarise, the facts are as follows:—

On 14th October, 1963 the complainant, Tan Piow Boh, being desirous of obtaining a stall licence at Jinjang New Village, approached an unlicensed hawker friend named Wong Yoke Lin for assistance. The latter took him to see appellant No. 2, who in turn brought appellant No. 1 into the picture. Why the complainant should apply to the Kuala Lumpur Municipality for a street licence for Jinjang New Village which is outside the municipal limit of Kuala Lumpur is beyond my comprehension. Understandably, no licence was obtained by the complainant. Several meetings took place between the parties concerned, including appellants No. 1 and No. 2, and as a result of these meetings it was suggested by appellant No. 1 that he could instead get him a stall licence for a site in High Street, Kuala Lumpur. Several meetings again took place between the appellants and the complainant which tends to suggest some conspiracy between them, and on the day in question, that is, 21st November, 1963, the first appellant handed to the complainant a plan for a stall site at High Street and asked the complainant for $50 tea money. When the complainant said he had no money then the first appellant asked the complainant to come back with the money in the afternoon. The complainant promptly went to the police station and lodged a report, where he was given $50 in marked notes to be handed over to the person concerned. At the appointed time he went back to the municipal offices and met the first appellant who asked him if he had got the money and when told that he had, he was asked to hand the money to the second appellant when he asked for it. A short while later the second appellant appeared. The complainant was taken to the lavatory and when told that the first appellant had asked him to collect the money the complainant handed the marked notes to the second appellant. At a pre-arranged signal the police closed in and both appellants